MUNICIPAL CORPORATIONS—GRANT TO WATER COMPANY NOT EXCLUSIVE—CONSTRUCTION OF CONTRACT.—Defendant city contracted with the assignor of the complainant granting a franchise to said assignor to lay mains and pipes in the streets and to furnish water to the inhabitants of the city, for a term of thirty years, which the said assignor bound himself to do. The contract contained no provision that the grant should be exclusive, or that the city would construct no water works of its own. Complainant now seeks to enjoin the city from constructing for itself a system of waterworks. *Held,* that the contract did not expressly or by implication bind the city not to construct a system of waterworks of its own and the injunction was refused. *Tillamook Water Co.* v. *Tillamook City et al.* (1905), (C. C. D. Ore.) 139 Fed. Rep. 405.

The right of a city to construct a system of waterworks or other public service plants after having granted a franchise to a private company for a term of years, depends upon whether the city has, or has not, exhausted its power, as the agent of the state, in granting the franchise to the company. *Center Hall Water Co.* v. *Center Hall,* 186 Pa. St. 74; *Boyertown Water Co.* v. *Boyertown,* 200 Pa. St. 394; *Bienville Water Co.* v. *Mobile,* 175 U. S. 109. The old principle announced in the case of *Charles River Bridge Co.* v. *Warren Bridge Co.,* 11 Peters 420, that in grants by the public nothing passes by implication but the grant is strictly construed against the grantee, forms the basis for decisions in cases of this sort. A number of late decisions have applied this principle to cases where a city is charged with violating its contract with a water or light company, and the law is well settled that the grant of a franchise by a city to a water or light company does not of itself raise an implied contract that the city will not do any act to interfere with the rights granted, and in the absence of a grant of an exclusive privilege, none will be implied. *Helena Waterworks Co.* v. *Helena,* 195 U. S. 383; *Long Island Water Supply Co.* v. *Brooklyn,* 166 U. S. 685; *Joplin* v. *Light Co.,* 191 U. S. 150; *Water Co.* v. *Skaneatles,* 184 U. S. 354; *Farmers' Loan & Trust Co.* v. *Sioux Falls,* 136 Fed. Rep. 721.

MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE OF FIRE DEPARTMENT.—A horse, owned and used exclusively by the fire department of the defendant was negligently permitted to trespass upon plaintiff's lawn. *Held,* defendant is not liable, the maintenance of a fire department by a city being an exercise of a governmental function. *Cunningham* v. *City of Seattle* (1905), — Wash. —, 82 Pac. Rep. 143.

It is well settled that a municipal corporation is not liable for alleged tortious injuries to the persons or property of individuals, when engaged in the performance of public or governmental functions or duties. See 20 AM. & ENG. ENCY. OF LAW (2nd Ed.) 1193, where cases from twenty-four states are cited. This rule is well established in Washington. *Lawson* v. *Seattle,* 6 Wash. 185; *Simpson* v. *Whatcom,* 33 Wash. 392; *Lynch* v. *City of North Yakima,* — Wash. —, 80 Pac. Rep. 79. In *Ogg* v. *Lansing,* 35 Iowa 495, the court says that it is impossible to conceive of the endless complications and embarrassments which the contrary doctrine would involve, and that under it no town would voluntarily assume corporate functions. That the

maintenance of a fire department is a public or governmental function, see *Wheeler* v. *City of Cincinnati*, 19 Ohio St. 19; *Hayes* v. *City of Oshkosh*, 33 Wis. 314; *Jewett* v. *City of New Haven*, 38 Conn. 368. However, none of the above cases involves precisely this state of facts, and in the vigorous dissenting opinion of RUDKIN, J.,—FULLERTON, J., concurring,—it is said that the real point in issue is this: "Can a municipality owning horses and having exclusive dominion over them, permit them to trespass upon the private property of others with impunity?" Municipalities, considered as artificial persons owning and managing property, are "chargeable with all the duties and obligations of other owners of property, and must respond for creating or suffering nuisances under the same rules as govern the responsibility of natural persons." COOLEY, TORTS (2nd Ed.) p. 738; DILLON, MUNICIPAL CORPORATIONS (4th Ed.) § 95; *Cumberland and Oxford Canal Corporation* v. *City of Portland*, 62 Me. 504. In *Rowland* v. *Kalamazoo Supt's of Poor*, 49 Mich. 553, the court cited COOLEY ON TORTS, supra, and *Ashley* v. *Port Huron*, 35 Mich. 296, and said: "An examination of the above authorities will show that municipal corporations, in the care and management of their property, like an individual, are in duty bound to produce no injury to others." In *Moulton* v. *Scharborough*, 71 Me. 267, a town was held liable for injuries caused by a vicious ram owned by it. Some courts, however, make a distinction between the liability of municipal corporations for injuries resulting from property held for governmental purposes and property held for gain and profit, holding that a recovery may be had in the latter case but not in the former. *Worden* v. *New Bedford*, 131 Mass. 23. But *Jones on Negligence of Municipal Corporations*, § 150, says, the weight of authority does not justify this distinction. See also BISHOP, NON-CONTRACT LAW, § 755 et seq.; *Aldrich* v. *Tripp*, 11 R. I. 141; *Barnes* v. *District of Columbia*, 91 U. S. 540.

NEGLIGENCE—PARENT'S NEGLIGENCE NOT IMPUTED TO CHILD.—Plaintiff, an infant, four years and one month old, while on the street unattended, was injured by defendant's car. *Held*, that the negligence of the child's parents, in permitting it to be on the street unattended, was not imputable to the child, so as to defeat a recovery in an action by the child. *Jacksonville Electric Co.* v. *Adams* (1905), — Fla. —, 39 So. Rep. 183.

This is a case of first impression in Florida. For a discussion of the principles involved and citation of authority see 4 MICHIGAN LAW REVIEW 79.

SALES — WAGERING CONTRACTS — DEALINGS IN FUTURES — QUESTION OF INTENTION.—Plaintiff was a cotton-broker who was in the habit of furnishing cotton to defendant, a manufacturer of cotton goods. In an action to recover for losses occasioned by defendant's failure to furnish sufficient margin in a particular series of transactions, plaintiff relied upon an express agreement that actual delivery was contemplated and upon his tender of delivery, in opposing defendant's contention that the agreement was a wagering contract and unenforceable. The invoices rendered in the transactions in hand were less explicit than those rendered in former actual sales in that they failed to specify either the weight or number of the cotton-bales. *Held*, that